

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

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|----------------------------------|---|-----------------------|
| JOAQUIN IRWIN FOY, |) | |
| |) | |
| Petitioner, |) | |
| v. |) | Civil Action |
| |) | No. 10-3333-CV-S-DW-H |
| MARTY C. ANDERSON, Warden, |) | |
| United States Medical Center for |) | |
| Federal Prisoners, |) | |
| |) | |
| Respondents. |) | |

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his confinement. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are without merit, it will be recommended that he be denied leave to proceed in forma pauperis.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner filed a Motion to Withdraw. Thereafter, petitioner was granted an opportunity to file a pro se traverse.

As grounds for relief in habeas corpus, petitioner alleges that his rights under the Speedy Trial Act have been violated; that the laws of the United States are null and void; and that he has been denied effective assistance of counsel.

A review of the file and records in the case indicates that petitioner was committed to the custody of the Attorney General, pursuant to 18 U.S.C. § 4246, by the United States District Court

for the Western District of Missouri in 1999, and again on September 13, 2007. Regardless of petitioner's assertions, the record indicates that he is lawfully confined at the present time for mental health care and treatment pursuant to 18 U.S.C. § 4246, and that his constitutional rights have not been violated regarding the manner in which he has been treated.

It is clear from the record that petitioner is lawfully confined pursuant to 18 U.S.C. § 4246. Therefore, his claim that he is being held based on bogus and frivolous laws and because no one has ever testified against him is without merit, and fails to state a claim for relief. Further, he is not entitled to assistance of counsel in a civil case. Glick v. Henderson, 855 F.2d 536, 541 (8th Cir. 1988). Because petitioner has repeatedly filed habeas corpus petitions in which he has failed to state a claim regarding being held in violation of laws that are null and void and/or frivolous, and being denied effective assistance of counsel in a civil case, the Court believes that res judicata should apply to such frivolous claims filed by petitioner in the future. See, e.g., Foy v. Holder, 10-3274-CV-GAF-H (Dec. 22, 2010); Foy v. Anderson, 10-3261-CV-S-DGK (Dec. 22, 2010). Therefore, the Court will recommend that the petition be dismissed with prejudice.

Because petitioner has failed to state a constitutional violation, it must be recommended that the petition herein for a writ of habeas corpus be dismissed with prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis and that the

¹ Petitioner has 14 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.

petition herein for a writ of habeas corpus be dismissed with prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate Judge

Date: 2/4/11